No. 00-860

SUPREME COURT, U.S.
FILED
MAY 17 2001
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

CORRECTIONAL SERVICES CORPORATION,
Petitioner,

v.

JOHN E. MALESKO,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED NOVEMBER 22, 2000
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Civil Database (Foley Square)

Civil Docket For Case #: 97-CV-4080

JOHN E. MALESKO,

Plaintiff,

v.

CORRECTIONAL SERVICES CORPORATION,
Formerly Known as Esmor Correctional Services Inc.,

Defendant,

"JOHN DOE #1" TO "JOHN DOE #10", inclusive, the names of said John Doe Defendants are presently unknown but intended to indicate officers and managers and guards of the corporate defendant,

Defendant.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
6/4/97	2	COMPLAINT filed; (ba) [Entry date 06/10/97]
9/11/97	4	RETURN OF SERVICE executed as to Corr. Serv. Corp. by Debra Dawn' on 8/26/97 Answer due on 9/15/97 for Corr. Serv. Corp. (cd) [Entry date 09/15/97]
9/15/97	7	NOTICE OF MOTION by Corr. Serv. Corp. to dismiss the complaint (kw) [Entry date 09/17/97]
9/16/97	5	MOTION BRIEFING SCHEDULE/ ORDER, plaintiff's papers in opposition to the motion are due on 10/17/97; defendant's papers in reply are due on or before 10/28/97 (signed by Judge John S. Martin); Copies mailed (kw) [Entry date 09/17/97]

DATE	NO.	PROCEEDINGS
10/16/97	8	AFFIDAVIT in opposition of J. Malesko by John E. Malesko Re: [7-1] motion to dismiss the complaint (cd) [Entry date 10/20/97]
1/6/98	10	ORDER denying [7-1] motion to dismiss the complaint; Pltff alleges that while serving a sentence in a halfway house operated by deft, he suffered a heart attack as a result of having to climb stairs because he ws denied permission to use an elevator. Accepting these allegations as true, the complaint cannot be dismissed (signed by Judge John S. Martin); Copies mailed (djc) [Entry date 01/07/98] [Edit date 01/08/98]
4/16/98	12	ANSWER to Complaint by Corr. Serv. Corp. (Attorney Debra Dawn) (sac) [Entry date 04/20/98]
12/22/98	16	MEMORANDUM AND ORDER, extending the Scheduling Order as follows: any proposed expert witness must serve a report in strict compliance with Rule 26(a)(2)(B)—plaintiff's experts by 2/19/99, and defendant's experts by 3/12/99. All expert discovery must be commenced in time to be completed by 4/2/99. Permission to make any dispositive motions must be sought from Judge Martin by 4/9/99; if (and only if) no dispositive motions has been made, the joint pre-trial order, in a format that complies with the trial Judge's individual rules, must be filed by 4/30/99, and plaintiff must serve his sections of the pre-trial order by 4/16/99; none of these deadlines will be extended except upon a showing of good cause. Any request for an extension must be made, by fax and by mail, at least one week before the deadline in question, and must state the other party's position concerning a specific proposed alternative date; I will not "so order" any consent adjournment unless it complies with the preceding paragraph and tells me in writing the factual basis for the "good cause." (signed by Magistrate Judge Douglas F. Eaton); Copies mailed (ae) [Entry date 12/28/98]

DATE	NO.	PROCEEDINGS
12/24/98	18	Objection(s) by Corr Serv. Corp., to so much of the order entered by Mag. Judge Douglas F. Eaton on 12/18/98, which denied CSC leave to amend its answer and assert affirmative defenses (ls) [Entry date 12/30/98]
2/2/99	19	AMENDED COMPLAINT by John E. Malesko (Answer due 2/16/99 for "John Doe #1" to "John Doe #10", for Corr. Serv. Corp.) amending [2-1] complaint ; Summons issued. (sac) [Entry date 02/04/99]
2/10/99	20	MEMORANDUM of LAW by Corr. Serv. Corp. in support of [7-1] motion to dismiss the complaint. (ri) [Entry date 02/17/99]
2/10/99	21	NOTICE OF MOTION by Corr. Serv. Corp. for an order pursuant to Rule 12(b)(6) FRCP dismissing the amended complaint as to CSC; Return date 3/4/99 at 9:30am. (ri) [Entry date 02/18/99]

DATE	NO.	PROCEEDINGS
2/18/99	22	ORDER, plaintiff's response to motion reset to 3/15/99 for [21-1] motion for an order pursuant to Rule 12(b)(6) FRCP dismissing the amended complaint as to CSC; Reply to Response to Motion reset to 3/25/99 for [21-1] motion for an order pursuant to Rule 12(b)(6) FRCP dismissing the amended complaint as to CSC (signed by Judge John S. Martin); Copies mailed (djc) [Entry date 02/19/99]
3/17/99	24	NOTICE OF CROSS MOTION by John E. Malesko for an order, allowing pltf to Amend the Complaint in this action; Return date not indicated. (sac)
3/17/99	25	BRIEF by John E. Malesko re: in opposition to [21-1] motion for an order pursuant to Rule 12(b)(6) FRCP dismissing the amended complaint as to CSC; in support of [24-1] cross motion for an order, allowing pltf to Amend the Complaint in this action (sac)
3/17/99	26	DECLARATION of Steven Pasternak Re: in opposition to [21-1] motion for an order pursuant to Rule 12(b)(6) FRCP dismissing the amended complaint as to CSC; in support of [24-1] cross motion for an order, allowing pltf to Amend the Complaint in this action . (sac)
3/26/99	27	MEMORANDUM by Corr. Serv. Corp. in opposition to [24-1] cross motion for an order, allowing pltf to Amend the Complaint in this action (sac) [Entry date 03/30/99]

DATE	NO.	PROCEEDINGS
3/26/99	28	AFFIDAVIT in opposition of George F. Brenlla by Corr. Serv. Corp. Re: [24-1] cross motion for an order, allowing pltf to Amend the Complaint in this action (sac) [Entry date 03/30/99]
3/26/99	29	REPLY MEMORANDUM by Corr. Serv. Corp. re: in support of [21-1] motion for an order pursuant to Rule 12(b)(6) FRCP dismissing the amended complaint as to CSC (sac) [Entry date 03/30/99]
4/12/99	31	Filed Memo-Endorsement on letter to Judge Martin from George Brenlla, dated 4/9/99, all proceedings are stayed pending decision on the pending motions (signed by Judge John S. Martin) (cd) [Entry date 04/13/99]
4/14/99	32	REPLY MEMORANDUM by John E. Malesko re: [24-1] cross motion for an order, allowing pltf to Amend the Complaint in this action (cd) [Entry date 04/15/99]
4/26/99	33	DECLARATION by John E. Malesko in further support of [24-1] cross motion for an order, allowing pltff to amend the complaint in this action (sac) [Entry date 04/29/99]
7/28/99	34	MEMORANDUM OPINION and ORDER # 82632 denying [24-1] cross motion for an order, allowing pltf to Amend the Complaint in this action, The amended complaint is dismissed with prejudice; The Clerk of the Court is instructed to close this case (Signed by Judge John S. Martin); Copies mailed. (forwarded to the Judgment Clerk) (ri) [Entry date 07/29/99]

DATE	NO.	PROCEEDINGS
7/30/99	35	JUDGMENT, that for the reasons stated in the Court's Memornadum [sic] Opinion (82632) and Order dated 7/28/99, the amended complaint is dismissed with prejudice and the motion to file a second amended complaint is denied; accordingly, this case is closed (signed by James M Parkison, Clerk of Court); Mailed copies and notice of right to appeal. Entered on 8/2/99 (cd) [Entry date 08/02/99]
8/23/99	36	NOTICE OF APPEAL by John E. Malesko; from [35-1] judgment order, [34-1] order. The amended complaint is dismissed with prejudice, [34-2] order The Clerk of the Court is instructed to close this case, [34-3] order . Copies of notice of appeal mailed to Attorney(s) of Record: George F. Brenlla, Esq. $105.00 Appeal filing fee paid August 23, 1999 on receipt # E 352831. (dt) [Entry date 08/24/99]
8/24/99	—	Notice of appeal and certified copy of docket to USCA: [36-1] appeal by John E. Malesko; Copy of notice of appeal sent to District Judge. (dt)
11/1/00	38	Memo-Endorsement on letter addressed to Judge Martin from George P. Stasiuk, dated 10/30/00, all proceedings will be stayed pending the Supreme Court's action on the petition for certiorari (signed by Judge John S. Martin); Copies mailed. (cd)

DATE	NO.	PROCEEDINGS
11/1/00	39	MANDATE OF USCA (certified copy) Re: Order, Adjudged and decreed that the judgment is said district court be and it hereby is Affirmed in part, Vacated in part and Remanded to said district for further proceedings in accordance with the opinion of this Court. 99-7995, Roseann B. Mackechnie, Clerk. [36-1] appeal by John E. Malesko (sl) [Entry date 11/02/00]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Court of Appeals Docket #: 99-7995

JOHN E. MALESKO,
Plaintiff-Appellant,

v.

CORRECTIONAL SERVICES CORPORATION, formerly known as Esmor Correctional Services Inc. and "JOHN DOES #1 TO JOHN DOES #10", inclusive, the names of said John Doe Defendants are presently unknown but intended to indicate officers and managers and guards of the corporate defendant,

Defendants-Appellees.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
8/25/99	Copy of notice of appeal and district court docket entries on behalf of Appellant John E. Malesko filed. [99-7995] Form C due on 9/2/99. Form D due on 9/2/99. (cv77)
1/10/00	Appellant John E. Malesko joint appendix filed w/pfs. Number of volumes: 1. (cv77)
3/24/00	Appellant John E. Malesko supplemental appendix filed with proof of service. (ca91)
10/6/00	Judgment of the district court is AFFIRMED IN PART; VACATED & REMANDED IN PART by published signed opinion filed. (SS) [99-7995] (cv70)
10/6/00	Judgment filed. Date: 10/6/00] (cv70)
10/30/00	Judgment MANDATE ISSUED. (hh)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INDEX NO. 97 Civ. 4080 (JSM)(DFE)
JURY TRIAL DEMANDED
twelve persons

JOHN E. MALESKO,
Plaintiff,

-against-

CORRECTIONAL SERVICES CORPORATION Formerly Known As ESMOR CORRECTIONAL SERVICES, INC.; JORGE URENA, formerly JOHN DOE DEFENDANT #1; JOHN DOE #2 to JOHN DOES #10 INCLUSIVE, THE NAMES OF SAID JOHN DOE DEFENDANTS ARE PRESENTLY UNKNOWN BUT INTENDED TO INDICATE OFFICERS AND MANAGERS AND GUARDS OF THE CORPORATE DEFENDANT,

Defendants.

AMENDED COMPLAINT

Plaintiff John E. Malesko complaining of the defendants herein respectfully shows and otherwise alleges to this Honorable Court as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction and venue over the subject matter in that at the time of the incident:

(a) Plaintiff was a resident of the State of New Jersey.

(b) The Corporate Defendant is a corporation duly organized and existing pursuant to the laws of the State of Florida and maintains offices in the State of Florida.

(c) The John Doe #1 to John Doe #10 inclusive, upon information and belief, are either residents of the State of New York and/or the State of Florida.

(d) Defendant Jorge Urena, formerly identified as one of the John Doe Defendants, was an employee of the Corporate Defendant and the guard who ordered Plaintiff to use the steps, as opposed to the elevator (see below). Defendant Jorge Urena was upon information and belief a resident of the State of New York. Defendant Urena's current whereabouts are not known to either party.

(e) The incident complained of occurred within the jurisdiction of the United States District Court, Southern District of New York.

2. This action involves an amount of money in excess of $75,000.00.

3. The incident occurred at a halfway house operated by the Corporate Defendant on behalf of the United States Government Department of Justice Bureau of Prisons, wherein the Plaintiff was an inmate awaiting release under parole conditions.

BACKGROUND MATERIAL

4. On or about December 5, 1992, Plaintiff was convicted of certain infractions and sentenced to a Federal Institution where he was incarcerated.

5. On or about February 4, 1994, Plaintiff was assigned to a halfway house located at 15 E. 31st Street, New York, New York, which facility was operated by the Corporate Defendant as an independent contractor.

6. While Plaintiff was incarcerated in the United States Prison, he was diagnosed with a congestive heart failure condition.

7. The Plaintiff, from 1992 to February 1994, was treated by prison physicians and medication.

8. At the time that the Plaintiff was released to the halfway house, the records of the Plaintiff indicated that the Plaintiff was disabled and should use the elevators and not go up and down stairs.

COUNT ONE

9. Plaintiff repeats and reiterates each and every allegation set forth in Paragraphs enumerated herein as 1 to 8 with the same force and effect as though the same had been set forth at length herein.

10. Upon information and belief, the Plaintiff's records, including but not limited to Plaintiff's medical condition were sent to the Corporate Defendant at the time the Plaintiff was transferred from the United States Penal Institution operated by the Corporate Defendant through its Officers, Directors, Guards, Servants and Employees.

11. From February 4, 1994 to on or about March 25, 1994, Plaintiff was permitted to use the elevator to go from the lobby to the 5th floor.

12. On or about March 1, 1994, the Corporate Defendant through its Officers, Directors, Guards, Servants and/or Employees changed certain rules and regulations which among other things provided that all inmates residing from the first floor to the fifth floor, must use the staircase to their respective quarters and only inmates with quarters on the sixth floor or above, be permitted to use the elevators.

13. Notwithstanding the rules and regulations outlined in Paragraph 12 supra, the Plaintiff, due to his disability and infirmity, was permitted to use the elevator. (Plaintiff had his quarters on the fifth floor.)

14. On or about March 18, 1994, Plaintiff notified the defendants that Plaintiff's medication had run out and needed to be replenished.

15. On or about March 28, 1994, the Plaintiff was prevented from using the elevator going to the fifth floor and was directed by Jorge Urena, formerly identified as one of the John Doe Defendants, to use the staircase.

16. Plaintiff reminded Jorge Urena, formerly identified as one of the John Doe Defendants, of Plaintiff's infirmity and disability and that Plaintiffs record indicated that he should not use the staircase but be permitted to use the elevator.

17. Notwithstanding being reminded of Plaintiff's condition, Jorge Urena (formerly identified as one of the John Doe Defendants) compelled and otherwise forced Plaintiff against his will to attempt to climb the staircase to the fifth floor.

18. The Plaintiff suffered a severe heart attack. Plaintiff fell and injured his *left* ear.

19. The incident aggravated the prior existing condition and the injury to his *left* ear caused the Plaintiff to lose his equilibrium, thereby preventing the Plaintiff from obtaining and maintaining a job or position and compelling Plaintiff to live in abject poverty.

20. The Defendants were negligent in failing to obtain requisite medication for Plaintiff's condition and were further negligent by refusing the Plaintiff the use of the elevator.

21. As a result of the negligence of the Defendants, the Plaintiff was rendered, sick, sore, lame, bruised, contused and otherwise disabled, as well as seriously aggravating a previously existing condition.

22. Plaintiff has incurred the expenditure of large sums of money for his care for the aforesaid injuries and Plaintiff

verily believes that he will continue to incur expenditures of large sums of money in the future for his care and treatment.

23. Plaintiff verily believes that as a result of the injuries aforesaid will have to continue to live in object [sic] poverty for the rest of his life.

COUNT TWO

24. Plaintiff repeats and reiterates each and every allegation set forth in Paragraphs 1 to 8 and 10 to 23 inclusive with the same force and effect as though said allegations were set forth at length herein.

25. The actions of the Defendants in failing to provide elevator use violated Plaintiff's right of equal access as provided in Federal Statutes.

26. As a result of the Defendants' failure to provide equal access, the Plaintiff was caused to be injured, causing him to be rendered sick, sore, lame, bruised, contused and otherwise disabled as well as seriously aggravating a previously existing condition.

27. The actions of the Defendants in failing to replenish Plaintiff's medication and their refusal to permit Plaintiff to use the elevator and force him to use the staircase, knowing that it would seriously risk and otherwise impair the life and limb of the Plaintiff, was vindictive and malicious and violated the Plaintiff's constitutional and federal rights.

WHEREFORE, Plaintiff demands judgment in the sum of:

(a) $1,000,000 in compensatory damages;

(b) $3,000,000 in anticipated future damages;

(c) attorneys' fees, expert fees, and costs; and

(d) For such sum as the Court and/or Jury may determine as punitive damages.

PASTERNAK, FELDMAN &
PLUTNICK, P.A.
Attorneys for Plaintiff

Dated: February 1, 1999

/s/ Steven Pasternak
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